



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

February 23, 2001

Mr. Martin S. Brown, Jr.
Stokes Bartholomew Evans & Petree
424 Church Street, Suite 2800
Nashville, Tennessee 37219-2386

Re: Request for Opinion No. 2001-06 ; KSC File No. 2001X56
Southwestern American Financial Corporation

Synopsis: Insurance agents who meet the definition of "employee" provided by the Securities and Exchange Commission in Rule 701 are employees for purposes of K.S.A. 17-1261(j), and securities issued to them pursuant to an employee stock option purchase plan are exempt from the registration provisions of the Kansas Securities Act pursuant to K.S.A. 17-1261(j).

Dear Mr. Brown:

This letter comes in response to your request for an opinion regarding the registration of stock options to be offered pursuant to the 2000 Stock Option Plan of Southwestern American Financial Corporation ("SW/AFC"). I incorporate by reference the details of your December 5, 2000, request letter and accompanying material.

According to your letter and materials, SW/AFC has created the 701 Plan for the benefit of its employees and the insurance agents of SW/AFC and its wholly owned subsidiary, Family Heritage Life Insurance Company of America ("FHL"). The 701 Plan is designed to allow eligible individuals to be compensated with options to purchase the stock of SW/AFC. At the current time there are fifteen (15) individuals in Kansas who would be eligible to obtain shares under the 701 Plan.

Pursuant to the 701 Plan, options are issued to certain persons as compensation for services rendered to SW/AFC. The Board of Directors determines who is allowed to participate. Currently, both regular employees and sales representatives of FHL are eligible to participate in the 701 Plan. Additionally, the Board of Directors determines exercise conditions based upon objective criteria.

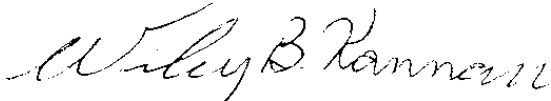
K.S.A. 17-1261(j) exempts from the registration provisions of the Kansas Securities Act "Any securities issued in connection with an **employee's** stock purchase, savings,

pension, profit-sharing or similar benefit plan.” (emphasis added) As noted in your letter, under Rule 701, enacted pursuant to §3(b) of the Securities Act of 1933, these sales are exempt from registration under the Securities Act when made to employees. In addition to its normal usage, Rule 701 states that “the term ‘employee’ includes insurance agents who are exclusive agents of the issuer, its subsidiaries or parents, or derive more than 50% of their annual income from those entities.” You further represent in your letter that the sales representatives of FHL meet this definition.

Based upon the facts as presented in your letter of December 5, 2000, and the accompanying materials, staff for the Office of the Kansas Securities Commissioner concludes that the proposed 701 Plan constitutes a “similar benefit plan” under K.S.A. 17-1261(j), and that the agents of FHL are “employees” for purposes of K.S.A. 17-1261(j) when they meet the definition provided by the SEC under Rule 701. The securities issued pursuant to the 701 Plan are, therefore, exempt from registration under the Kansas Securities Act.

This opinion is based upon the facts as represented in your letter and accompanying materials. Any variance from those facts could result in a different conclusion. You are advised that this opinion is intended solely as an expression of enforcement policy and is not binding on any court or other tribunal.

Sincerely,

A handwritten signature in cursive script, reading "Wiley B. Kammarr".

Wiley B. Kammarr
Associate General Counsel